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CITATIONS

Miscellaneous:

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 13

DOYLE SMITH, PETITIONER

v.

EVENING NEWS ASSOCIATION

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

REPLY BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This reply brief is directed to respondent's contention that, since this suit was brought by individual employees rather than by the union, it falls outside the purview of Section 301 of the Labor-Management Relations Act; that the State court would therefore be free to apply State law; and that one of the major considerations for finding the *Garmon* preemption principles inapplicable here—that the case would in any event be decided in accordance with federal law—is not in fact present. This contention was anticipated, but not fully treated, in the government's opening brief (p. 11, n. 9), for the decision of the court below did not raise the Section 301 issue.

1. Respondent's contention rests on the premise (Br. 14–15) that a claim for wages lost as a result of breach of the no-discrimination clause of a collective bargaining agreement is a "uniquely personal right" of the employee which only he can vindicate, and therefore, under *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, cannot be considered a suit within the purview of Section 301(a) of the Labor-Management Relations Act. We submit that respondent's premise is erroneous.

In *Westinghouse*, the union brought suit on behalf of its members, in a federal district court, to recover wages allegedly due them under the collective bargaining agreement.[1] A majority of the Court (Chief Justice Warren and Justices Frankfurter, Burton, Minton and Clark), held that the suit sought to enforce rights under the contract which were "uniquely personal" to the employees, and that Section 301(a) did not confer on the federal district courts jurisdiction over such suits.[2] The majority of the Court was impelled to this view by a desire to avoid the constitutional question which would be presented if it were held that Section 301 vested the federal courts with jurisdiction over contract actions without at the same time empowering them to apply federal law. This problem was resolved in *Textile*

[1] The company deducted wages for absences on April 3, despite a provision in the contract that full salary should be paid regardless of absences in that month.

[2] However, the case does not hold that the union could not enforce these "personal" rights. See Cox, *Rights under a labor agreement*, 69 Harv. L. Rev. 601, 603 (1956).

Workers Union v. *Lincoln Mills*, 353 U.S. 448, when the Court held that Section 301 not only granted the federal courts jurisdiction, but also empowered them to fashion a body of federal law for collective bargaining agreements in industries affecting commerce.

Since *Lincoln Mills*, the distinction between contract rights which are "uniquely personal" to the employee and those which are not has either disappeared, or the former category has not been extended beyond the precise situation presented in *Westinghouse, i.e.*, a suit to collect wages due the employees under the contract. Thus, in *Lincoln Mills* itself, the union was permitted to compel arbitration of an employee claim for back pay, and in the companion case of *General Electric Co.* v. *Local 205, UEW*, 353 U.S. 547, it was permitted to compel arbitration of an employee claim of wrongful discharge. In *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, the Court held that the union could obtain specific enforcement of an arbitrator's award ordering reinstatement and back pay to an employee who was wrongfully discharged. Most important, in *Dowd Box Co.* v. *Courtney*, 368 U.S. 502, the union was permitted to obtain a money judgment equivalent to the amount of back wages which the employees would have earned had the employer complied with the contract. All of these actions were brought in federal courts under Section 301.

2. If Section 301 and federal substantive law would thus be applicable had the union brought the suit, respondent's position reduces itself to the contention that, merely because the suit is brought by the in-

dividual employees, a different result obtains, *i.e.*, State substantive law governs. This conclusion rests upon two premises: first, that Section 301 does not give the federal courts jurisdiction over suits brought by individual employees; and, second, that the mandate to develop a body of pre-emptive federal substantive law should not be deemed to extend to any suit which the particular plaintiff could not have brought in a federal district court. The second of these premises, as we shall show, is wholly unacceptable, for it would entail the intolerable consequence that different rules of substantive law would be applicable to the same cause of action and the same legal issues, depending upon the identity of the plaintiff. We would add, moreover, that the first premise—*i.e.*, the inability of individual employees to sue under collective bargaining agreement in federal courts—is at best dubious.

(*a*) Section 301(a) of the Labor-Management Relations Act provides that:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Although this section speaks only of suits "in any district court of the United States," this Court held in *Dowd Box, supra,* and *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, that suits by a union within the

purview of that section, *i.e.*, based on a collective bargaining contract in an industry affecting commerce, could also be brought in a State court and would there be subject to federal substantive law. Thus, Section 301 accomplishes two things: (a) it creates a non-exclusive federal forum for suits on collective bargaining agreements in an industry affecting commerce; and (b) it provides that such suits shall be governed by federal substantive law, whether brought in State or federal courts.

Even if it be held that the first aspect of Section 301(a)—the jurisdictional grant—extends only to suits on collective bargaining agreements by employers and unions, it does not follow that such suits, if brought by individual employees in a State court, are not within the substantive-law purview of Section 301(a).[3] It borders on the absurd, we believe, to suggest that the same cause of action involving the same facts and the same legal issues should be decided in accordance with different substantive-law rules, depending upon whether it is brought by an

[3] Where Congress permits federal rights to be enforced in a State court as well as a federal court, the general principle is that the State may apply its own particular rules of procedure so long as those rules do not detract from or impair the federal right which has been created. See *Central Vermont Ry. Co.* v. *White*, 238 U.S. 507, and *Dice* v. *Akron, Canton & Youngstown R.R.*, 342 U.S. 359 (State court enforcement of the Federal Employers Liability Act). Cf. *Cates* v. *Allen*, 149 U.S. 451 (case removed to federal court on diversity grounds should be remanded to State court, rather than dismissed, where State equity rules would permit relief which federal rules deny). A State court rule permitting individual employees to sue on a claim, which only the union could sue on in a federal district court, would appear to be a permissible "procedural" variation which does not impair the substantive right

employee or his representative, *i.e.*, the union.[4] The wages due, the order of layoff under the seniority clause and the grounds for discharge cannot vary merely because the plaintiff is the individual employee rather than the union. To permit such variation would create uncertainty, destroy uniformity and "exert a disruptive influence upon both the negotiation and administration of collective bargaining agreements." *Local 174, Teamsters* v. *Lucas Flour Co., supra,* at 103.

Indeed, the same chaotic consequences would result from the application of State law even in suits brought by individual employees to enforce a "uniquely personal" right, and even on the assumption that the union would not have been able to sue on behalf of its members. For while a purely personal grievance may furnish the occasion for a suit, the outcome

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created by Section 301. The rule concerns "the manner and the means by which a right to recover * * * is enforced," and does not "significantly affect the result of a litigation." *Guaranty Trust Co.* v. *York*, 326 U.S. 99, 109. Moreover, to permit individual employees to sue is consonant with the broad purpose of Section 301, *i.e.*, to require the parties to abide by the terms of their agreements. Cf. *McCarroll* v. *Los Angeles County District Council of Carpenters*, 49 Cal. 2d 45, 315 P. 2d 322, 328, certiorari denied, 355 U.S. 932 (holding that the foregoing considerations permitted a State court to enjoin strikes in breach of the collective agreement, even though the Norris-La Guardia Act would have barred a federal court, had the suit been brought there, from granting the same relief).

[4] For a general discussion of this problem, see Summers, *Individual Rights in Collective Agreements and Arbitration*, 37 N.Y.U. L. Rev. 362, 370–375 (1962); Aaron, *Reflections on the Legal Nature and Enforceability of Seniority Rights*, 75 Harv. L. Rev. 1532, 1551–1552, n. 69 (1962); Cox, *Federalism in the Law of Labor Relations*, 67 Harv. L. Rev. 1297, 1339 (1954).

may turn upon issues of quite general significance. To cite only one example, the question whether a strike in breach of contract constitutes a repudiation of the agreement which releases the employer from his undertakings may arise in connection either with an action by an individual employee to recover unpaid wages, or in an action by the union to compel arbitration. It would be highly undesirable to permit that question to be governed by different legal standards, depending upon whether it arose in the one context or the other.

(*b*) If it be assumed that the jurisdictional grant of Section 301(a) does not authorize individual employees to enforce federal rights under a collective bargaining agreement in a federal court, it may be thought incongrous to permit them to enforce such federal rights in a State court. However, as between that anomaly and the massively disruptive incongruity of allowing the same legal issues to be governed by varying rules of decision, the former seems infinitely preferable. Furthermore, the proposition that individual employees cannot enforce rights under a collective bargaining agreement in federal courts is by no means clear. While several lower courts have interpreted Section 301(a) as authorizing suits only by the employer or the union,[5] we submit that its words do not necessitate this conclusion. It is equally consistent with the words to read the phrase "between an employer and a labor organization" as merely

[5] *e.g.*, *United Protective Workers of America* v. *Ford Motor Co.*, 194 F. 2d 997 (C.A. 7); *Copra* v. *Suro*, 236 F. 2d 107 (C.A. 1); *Palnau* v. *Detroit Edison Co.*, 301 F. 2d 702 (C.A. 6).

describing the kind of contract on which suit may be brought, and not the kind of suits. Nor is this reading inconsistent with the legislative history of Section 301(a), for, though the dominant intention was to provide a forum for contract suits by or against labor organizations, there is some indication that employee suits were also contemplated.[6] Moreover, the foregoing analysis appears to be supported by the holding in *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, that Count II of the complaint there was within the purview of Section 301(a) notwithstanding that it was directed against individual members of the union and federal jurisdiction was claimed on diversity grounds (*id.*, at 245–249).

To read the phrase "between an employer and a labor organization * * *" as modifying the adjoining noun "contracts" and not the earlier noun "suits" would produce harmony not only between the governing substantive law and the forum in which individual employees may sue but also within the statutes defining the jurisdiction of the federal courts. As we have said above there are compelling reasons for holding that the law governing all actions upon a single collective bargaining agreement must be the same, *i.e.*, federal, regardless of where the suit is brought. It follows that an action by an individual employee upon a collective bargaining agreement would be an action arising under the laws of the United States. *Textile*

[6] See the statements of Representative Barden and Senator Taft set out in the Appendix to Mr. Justice Frankfurter's dissenting opinion in *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 521, 538.

Workers Union v. *Lincoln Mills,* 353 U.S. 448. A district court would therefore have jurisdiction without regard to the amount in controversy under 28 U.S.C. 1337 which grants such jurisdiction over civil actions under statutes regulating commerce. Cf. 28 U.S.C. 1331(a), which would also give jurisdiction where the amount in controversy exceeded $10,000. Nothing in Section 301(a) indicates an affirmative intention to curtail the jurisdiction granted by these statutes once it is concluded for independent reasons, as we think it must be, that federal law governs all actions under collective bargaining agreements, wherever brought, it being intolerable to have the three-way relationship between employer, employees and labor union under a single contract governed by two different sets of laws. Reading Section 301(a) to permit individual "[s]uits for violation of contracts between an employer and a labor organization * * *" would bring harmony into this entire body of law.

In sum, therefore, the instant suit falls within the purview of Section 301 and federal substantive law would govern, notwithstanding that it was brought by individual employees rather than by the union on their behalf. Accordingly, the fact that individual employees brought the suit does not impair the considerations advanced in our opening brief for concluding that the *Garmon* preemption principles were inapplicable here and did not bar the exercise of State court jurisdiction.

For these reasons, as well as those set forth in our opening brief, the judgment of the court below should be reversed.

Respectfully submitted.

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